

Docket: 2015-3927(IT)I

BETWEEN:

WALTER YOURKIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on March 23, 2016, at Toronto, Ontario

Before: The Honourable Justice Patrick Boyle

Appearances:

For the Appellant: No one appeared
Counsel for the Respondent: Elizabeth Chasson

JUDGMENT

In accordance with the reasons delivered orally at the hearing (a copy of which is attached hereto), the appeal from the assessment made under the *Income Tax Act* for the Appellant's 2013 taxation year is dismissed, with costs fixed at \$1,850 payable by the Appellant to the Respondent.

Signed at Montreal, Quebec this 3rd day of May 2016.

“Patrick Boyle”

Boyle J.

Docket: 2015-3927(IT)I

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and

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EDITED VERSION OF TRANSCRIPT
OF ORAL REASONS FOR JUDGMENT

Let the attached edited transcript of the Reasons for Judgment delivered orally from the Bench at Toronto, Ontario on March 23, 2016 be filed. I have edited the transcript (certified by the Court Reporter) for style, clarity and to make minor corrections only. I did not make any substantive changes.

Signed at Montreal, Quebec this 3rd day of May 2016.

“Patrick Boyle”

Boyle J.

Citation:2016 TCC 111
Date:20160503
Docket: 2015-3927(IT)I

BETWEEN:

WALTER YOURKIN,

Appellant,

and

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REASONS FOR JUDGMENT

Boyle J.

[1] Walter Yourkin was not present when his informal appeal was called at 9:30 this morning. It has been adjourned for an hour in the event he was delayed en route. He has not appeared, nor does it appear that he has tried contacting the Respondent or the Court Registry this morning.

[2] The Appellant requested an adjournment from the Court on March 1st, although I'm using the word "request" lightly. The Court informed the Appellant that a medical certificate would be required to support his request. His request had included copies of several prescriptions, the office hours of his medical clinic and a list of his upcoming doctor appointments, which showed a single appointment upcoming in June of 2016. His March 1st adjournment request was not worded in the form of a request of the Court. It included the handwritten paragraph: "I will not be able to attend my day in Court, set for 23rd day of March 2016 at 9:30 a.m.

Reason? I am extremely ill. My medical condition is a private matter. Beyond any related reason or reasons will require my written signature. I hereby remove Court Authority to exercise ‘Appellant Failure to Appear’.”

[3] No response was received from Mr. Yourkin to the Court’s written request for a medical certificate confirming his inability to proceed. When the Court tried communicating with the Appellant by telephone, it was learned that the telephone number he had provided to the Court was no longer in service.

[4] The Court waited to decide his adjournment request until yesterday, no doubt to allow for the possible receipt of a medical certificate or a follow-up telephone call from the Appellant. None was received.

[5] The Associate Chief Justice of the Court denied the adjournment request yesterday, nothing further having been received or heard from the Appellant in support of an adjournment. The Respondent confirmed this morning that there had been no recent communication with the Appellant.

[6] It is clear from the Appellant’s prescriptions that he is at least 84 years old at this stage. It is very well possible that the Appellant is extremely ill and that his chosen communication style is simply at the outer end of the range of cantankerousness that is at times exhibited by some at his stage of life, both old and ill. However, there is more to be considered.

[7] The Reply sets out in specific detail, and Respondent counsel has confirmed its correctness to the Court this morning, that Mr. Yourkin has appealed this very same issue in this Court in seven different proceedings, heard in six different years,

for his 2001 to 2012 taxation years. Each hearing resulted in the dismissal of his claim for the deduction of spousal support payments.

[8] His Notice of Appeal for 2013 before the Court this morning does not suggest that there has been any change in facts or law or reasons applicable to his claim for a deduction.

[9] From the Appellant's Notice of Appeal and the material he attached to it, his appeal is grounded in the fact that he had a pre-1995 "commencement day" interim Court Order to pay spousal support.

[10] There was a later 1997 post-"commencement day", final Court Order which ended his interim support obligation and replaced it with an obligation to pay spousal support in the amount of 40 percent of any income he received from any new employment he might find. The 1997 Court Order was made in accordance with minutes of settlement. The Appellant maintains in this Court that the 1997 Court Order was not valid as it was his counsel and not he who signed the Minutes of Settlement. He does not suggest that he continued to make support payments to his spouse in accordance with the 1995 Order, nor does he indicate he paid any support from any new sources of employment income to her.

[11] However, the 1997 Order, which terminated his support obligations, ordered as part of the division of property a division of his pension rights with the Unilever Canada Pension Plan. It appears from his Notice of Appeal that he is wanting to deduct his Unilever pension property division payments to his spouse as if they were the continued payment of the interim support payments. It is hardly a surprise that his previous appeals have all been dismissed.

[12] No application has ever been made by the Respondent to have Mr. Yourkin's repetitive proceedings in this Court declared vexatious pursuant to section 19.1 of the *Tax Court of Canada Act*. This Court does nonetheless have jurisdiction to prevent the abuse of its processes. See, for example, the Federal Court of Appeal in *Fournier v. Canada* 2005 FCA 131.

[13] Mr. Yourkin did not follow up his adjournment request with the Court. He did not appear this morning. He filed a Notice of Appeal which seeks to re-litigate the very same issue on the same facts of law and for the same reasons as he has lost in six prior hearings of this Court in the past 12 years. He is abusing the processes of this Court and he has unduly delayed the prompt and effective resolution of this latest appeal.

[14] In addition to warranting the dismissal of his appeal, this warrants a costs award against the Appellant in favour of the Respondent in an amount in excess of what Rule 10.2 would alone provide.

[15] The appeal is dismissed with costs fixed at \$1,850. That amount is the Tariff B amount for Class A General proceedings in this Court.

Signed at Montreal, Quebec this 3rd day of May 2016.

“Patrick Boyle”

Boyle J.

CITATION: 2016 TCC 111
COURT FILE NO.: 2015-3927(IT)I
STYLE OF CAUSE: WALTER YOURKIN AND HER
MAJESTY THE QUEEN
PLACE OF HEARING: Toronto, Ontario
DATE OF HEARING: March 23, 2016
REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle
DATE OF JUDGMENT: May 3, 2016

APPEARANCES:

:
Counsel for the Respondent: Elizabeth Chasson

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: William F. Pentney
Deputy Attorney General of Canada
Ottawa, Canada